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6, 1995, Complainant was promoted to the rank of lieutenant and assigned to the 3rd District of the CPD, commonly known as the Grand Crossing District. As lieutenant, Complainant was assigned to the second watch, commonly known as the day shift. At that time, Captain Carl Merritt (Captain Merritt) was the Regular Watch Commander of the day shift.

3. Joseph Hartford (Hartford) began working as a patrolman for the CPD September 14, 1970. Hartford was promoted to the rank of sergeant May 4, 1984 and assigned to the 21st District; he was promoted to the rank of lieutenant March 1996 -- approximately one year after Complainant was promoted to lieutenant -- and assigned to the 3rd District; he was transferred to the 1st District November 1998.

4. Lt. James Polk (Polk) became the District Commander of the 3rd District in June 1994 and served in that position until he retired in July 1998. Polk had begun as a police officer for Respondent in February 1966; he was promoted to the rank of sergeant in 1984 and promoted to the rank of lieutenant in 1988. The title "District Commander" is an exempt rank and district commanders serve at the pleasure of the Superintendent of Police. The District Commander is responsible for overseeing the entire district. All employees in the district, including captains, lieutenants, sergeants, patrol officers, and sworn and non-sworn employees ultimately report to the District Commander.

5. Once Complainant was assigned as lieutenant in the 3rd District in 1995, Complainant became the highest- ranking female officer working in the District. At that time, Polk was District Commander of the 3rd District.

6. The responsibilities of a lieutenant working solely as a lieutenant include supervising sergeants, responding to the more serious calls, assisting sergeants with incidents involving liquor establishments; training sergeants on the procedure for filing complaint register (CR) investigations, and preparing and reviewing reports. Sergeants' responsibilities include supervising patrol officers.

7. Captain Benjamin Weyforth (Captain Weyforth) began as a patrol officer with Respondent February 28, 1966; he was promoted to sergeant around 1971; he was promoted to lieutenant in 1978; he was promoted to captain in 1988; and he retired from the CPD April 1, 1998.

8. After Weyforth retired in April 1998, there were five lieutenants and one captain reporting to Polk in the 3rd District: Captain Merritt, Lt. George Cornish (Cornish), Lt. Hartford (Hartford), Lt. Francis Nelligan (Nelligan) Lt. Patrick Pokrovac (Pokrovac) and Complainant. Merritt, Cornish, Hartford, Nelligan and Pokrovac are all males. Of the five lieutenants, Complainant had been promoted to the rank of lieutenant sooner than all except for Cornish. Cornish had been promoted to the rank of lieutenant in March of 1988; Complainant had been promoted to lieutenant April 6, 1995; Hartford had been promoted to lieutenant in March of 1996; Pokrovac had been promoted to lieutenant in March of 1997; and Nelligan had been promoted to lieutenant in March of 1997.

9. In 1995, the CPD began to phase out the rank of captain. At that time, Captain Weyforth was transferred out of the Marquette 10th District to the 3rd District. Since then, in most districts no other personnel were promoted to the rank of captain and, as personnel with the rank of captain retired, no one was promoted to the rank of captain as a replacement. From 1995 until he left the CPD in April 1998, Captain Weyforth worked as Captain in the 3rd District.

10. Along with the program to phase out the rank of captain, the CPD also embarked upon a program to split the responsibilities of the lieutenants by designating one lieutenant an “administrative lieutenant” and one a “field lieutenant.” The administrative lieutenant would be responsible for work performed inside the district confines such as assignments, approving vacations, and time sheets; and the field lieutenant would be responsible for the actual operations out on the street. That program did not work out and the implementation of designating separate responsibilities for lieutenants was never executed on a regular basis.

11. Around the time in 1995 that the rank of captain was being phased out, all captains were career-service captains. Career-service captains were not appointed to the position by superiors; instead, the position was awarded after successfully passing a testing procedure.

12. Routinely, captains would work as the Regular Watch Commander for a particular watch. In the CPD, the midnight shift was commonly known as "first watch," the day shift was commonly known as "second watch," and the afternoon shift was commonly known as "third watch."

13. Because the rank of captain was being phased out, personnel with the rank of lieutenant would be designated and promoted by the District Commander to the position of Regular Watch Commander of the various watches. The Regular Watch Commander is responsible for everything that goes on during the particular watch and reports directly to the District Commander. When designated as the Regular Watch Commander, the lieutenant's pay is the same salary as that of a captain.

14. During the time when the Regular Watch Commander is away from the district on vacation, on days off or for other reasons, a lieutenant is designated to act as the Acting Watch Commander for the particular watch.

15. All lieutenants are eligible to be promoted to Regular Watch Commander and to work as Acting Watch Commander. The District Commander has the responsibility to select a lieutenant to become the Regular Watch Commander.

16. When working as Acting Watch Commander, a lieutenant's duties are to manage the watch, take care of the day-to-day business of the district, sign arrest reports, assign officers, and conduct roll call training. When working as Acting Watch Commander, lieutenants are paid at the hourly pay rate for the rank of captain, which provides the lieutenant an increase in pay for the hourly time they are working as Acting Watch Commander.

17. After becoming a lieutenant in April 1995, Complainant was assigned to the second watch at the 3rd District and reported to Captain Merritt. At that time, Lieutenant Sylvester King

was already assigned to the second watch. Although King was the more senior lieutenant to Complainant, both he and Complainant would take turns working as Acting Watch Commander when Captain Merritt was away from the District. Later, Complainant was reassigned to the third watch and reported to Captain Bingham. Subsequently, Captain Weyforth replaced Bingham on the third watch and Complainant reported to Weyforth. Later, in January 1997, Weyforth was transferred to the second watch and requested Complainant to be reassigned to the second watch so that she could continue reporting to him. Complainant was reassigned to the second watch reporting to Weyforth.

18. George Cornish was hired March 25, 1968 as a patrolman, promoted to field sergeant 12 years later, promoted to field lieutenant in March of 1988, and promoted to captain 12 years later. Cornish spent 5 months as a captain and then went back to the position of field lieutenant. In 1990, Cornish was assigned to the 3rd District.

19. In early 1997, Captain Dulay (Dulay) was the first watch Regular Watch Commander in the 3rd District. At that time, Nelligan and Pokrovac were assigned to first watch and Cornish and Hartford were assigned to the third watch.

20. When Dulay transferred out of the 3rd District in the summer of 1997, Cornish requested Polk to re-assign him to the first watch as the Regular Watch Commander to fulfill Dulay's position. Polk assigned Cornish to the position. At the time Polk assigned Cornish as Regular Watch Commander, Cornish was the most senior lieutenant in the 3rd District and had more seniority as lieutenant than Nelligan, Pokrovac, Hartford and Complainant.

21. Sometime after Cornish was assigned to the Regular Watch Commander position on the first watch in March 1997, Polk told Complainant about a conversation he previously had with Chief Deputy Hernandez. Polk told Complainant that Hernandez had questioned his selection of Cornish as the Regular Watch Commander on first watch, and that Polk responded to the Deputy that Cornish was his most senior lieutenant and asked the Deputy if he expected him to put one of his junior lieutenants in a Watch Commander position.

22. In 1996 and 1997, while Complainant was a lieutenant in the 3rd District, she took a very proactive part in the CAPS (Chicago Alternative Policing Strategy) program, also referred to as the community-policing program. A previous plan for the program for the 3rd District had been developed, but had been rejected by upper management. Complainant approached Polk and voluntarily offered to develop a new 3rd District plan that would be acceptable to upper management. Polk agreed to allow Complainant to tackle this assignment and Complainant worked on and developed a plan, which was later submitted under the name of Commander Polk and approved and accepted by upper management. During the time Complainant worked to develop the plan, she spent much of her time inside the District office and not in the field.

23. As part of her involvement with the community-policing program, Complainant set up a system to get the officers involved in the program and performed training sessions for the patrol officers in the community-policing office.

24. Since 1997, Complainant was on the second watch and regularly performed the Acting Watch Commander position. During this time period Complainant came into contact with Polk almost daily because their shifts overlapped. During these contacts, it was not unusual for Polk to sometimes stop in the Watch Commander's office while Complainant was working as the Acting Watch Commander and joke around with Complainant.

25. In 1997 or early 1998, Polk told Complainant that he had been directed by his superiors downtown to order her to spend more time in the field performing field lieutenant duties. Complainant replied that she would "go out in the field and read a book like the other lieutenants." Complainant was joking with Polk when she made this statement and never intended to go out into the field and read a book. Polk and Complainant mutually joked during this conversation and Polk took no disciplinary action against Complainant related to her making the statement.

26. When assigned as the Regular Watch Commander of a particular watch, a lieutenant would have responsibility of the day-to-day operations of the district, would have the authority to

institute procedures, and would generally have more authority and responsibility than when he/she was only working as Acting Watch Commander on a temporary basis. Further, the Regular Watch Commander position is a springboard to being promoted to any other exempt position in the CPD.

27. During 1997, Complainant reported directly to Captain Weyforth on the second watch. Captain Weyforth reported directly to Commander Polk. During the time that Captain Weyforth was on the second watch, Complainant was his only lieutenant and performed the duties of Acting Watch Commander when Captain Weyforth was on vacation or otherwise away from the District. It was standard practice in the District that a lieutenant would take on the position of Acting Watch Commander to perform the duties of the Regular Watch Commander when the Regular Watch Commander was away from the District.

28. Through feedback from her superiors, through her performance reviews and because she had never received any negative feedback about her supervisory skills, management style or any of her work, Complainant believed she was doing a good job in her performance as a lieutenant and as Acting Watch Commander.

29. In late 1997, Complainant became aware that Captain Weyforth was considering retiring and informed Polk that she was interested in filling Captain Weyforth's position. Captain Weyforth retired April 1, 1998.

30. At the time of Weyforth's April 1, 1998 retirement, there were five lieutenants and one captain reporting to Polk at the 3rd District—Lt. Cornish, Complainant, Lt. Hartford, Lt. Pokrovac, Lt. Nelligan and Captain Merritt. At that time, Captain Merritt was the Regular Watch Commander on third watch and Hartford was working the third watch and served as the Acting Watch Commander on days when Captain Merritt was off or otherwise away from the District.

32. On March 31, 1998, Complainant checked the assignment book and discovered that she was being reassigned to the third watch to work under Captain Merritt; that Hartford was being assigned as the new Regular Watch Commander on second watch; and that Pokrovac was

being reassigned from midnights to the second watch under the new Regular Watch Commander, Hartford. Shortly after that, Complainant went to see Commander Polk and asked him why he had not selected her for the Regular Watch Commander position vacated by Weyforth. Polk responded that he did what was best for the District. At that time, Complainant was the next senior lieutenant behind Cornish of those in the 3rd District, including Lt. Hartford, Lt. Pokrovac, and Lt. Nelligan.

33. Polk informed Hartford that he was going to be assigned to the second watch as Regular Watch Commander in February or March, 1998.

34. Prior to being assigned to the Regular Watch Commander position by Polk, Hartford had not sought the position, had not informed Polk that he was interested in the position and had never spoken to Polk about the position. Although Hartford did not seek the position, he was glad it was offered to him. Hartford stayed in the position as Regular Watch Commander at the 3rd District until November 1998 when he transferred to the 1st District, where he worked as a field lieutenant. Prior to March 1996, Hartford had never worked under the supervision of Polk.

35. Complainant's performance rating for Jan 1, 1996 through June 30, 1996 indicates a total rating of 97 out of a possible 100. Complainant was rated for her performance as a lieutenant in District 3. This rating was issued by Captain Weyforth and approved by Polk. In the "Personal Relationships" section there are comments stating "Superior rapport with all fellow workers and citizens. Is watch Sector Manager." Complainant's performance rating for July 1, 1996 through December 31, 1996 indicates a total rating of 99 out of a possible 100. Complainant was rated for her performance as a lieutenant in District 3. This rating was issued by Captain Weyforth and approved by Polk. In the "Personal Relationships" section there are comments stating "Is well regarded by superiors, peers, and subordinates. Excellent rapport with all." Complainant's performance rating for January 1, 1997 through June 30, 1997 indicates a total rating of 99 out of a possible 100. Complainant was rated for her performance as a lieutenant in District 3. This rating was issued by Captain Weyforth and approved by Polk.

In the "Personal Relationships" section there are comments stating "A real team player. Looked up to by subordinates." Complainant's performance rating for July 1, 1997 through December 31, 1997 indicates a total rating of 97 out of a possible 100. Complainant was rated for her performance as a lieutenant in District 3. This rating was issued by Captain Weyforth and approved by Polk. In the "Personal Relationships" section there are comments stating, "Deals fairly with Community. Involved with coordinating officers in problem solving."

36. On Nov 7, 1998, Complainant was promoted to the Regular Watch Commander position under District Commander Walker.

37. In 1998, Complainant had the requisite amount of service for pay at the Step 8 rate. The *Position & Salary Schedule Chicago Police Department 1998 (January 1-June 30) and for (July 1-December 31)* indicates the rate for the position of Captain, Title Code 9175, and for other positions in the CPD.

38. Complainant felt extremely devastated, very depressed and demoralized to have worked very hard, to have gained experience, and to have worked as Acting Watch Commander for a longer period of time than any other lieutenant and still to have been passed over for the promotion. Complainant felt shock and embarrassment to have to continue to face the patrol officers she had been working with on a daily basis with no real explanation to offer as to why she had not received the promotion and found herself feeling frustrated and angry.

39. Complainant was extremely proud of her performance as a lieutenant and Acting Watch Commander and believed she was doing a good job through feedback from her superiors, from her performance reviews and because she had never received any negative feedback about her supervisory skills, management style or any of her work.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved Party" as defined by Section 1-103(B) of the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (Act).

2. Respondent is an "employer" as defined by Section 1-101 (B) of the Act.
3. The Illinois Human Rights Commission has jurisdiction over the parties and subject matter of this action.
4. Complainant presented a *prima facie* case of sex discrimination on the basis of failure to promote.
5. Respondent articulated legitimate, non-discriminatory reasons for its decision not to promote Complainant.
6. Complainant proved, by a preponderance of the evidence, that Respondent's articulated reasons for failing to promote her were pretextual.

DETERMINATION

Complainant has established, by a preponderance of the evidence, that Respondent unlawfully discriminated against her on the basis of her sex when she was not selected for the promotion to the position of Regular Watch Commander.

DISCUSSION

A Complainant bears the burden of proving discrimination, by a preponderance of the evidence, in accordance with the Act at 775 ILCS 8A-102(I). That burden may be satisfied by direct evidence that an adverse employment action was taken for unlawful discriminatory reasons or through indirect evidence pursuant to **McDonnell Douglas Corp. v. Green**, 411 U.S. 793, 93 S.Ct. 1817 (1973) and **Texas Dept. of Community Affairs v. Burdine**, 450 U.S. 248, 101 S. Ct. 1089 (1981), adopted by the Illinois Supreme Court in **Zaderaka v. Illinois Human Rights Commission**, 131 Ill.2d 172, 545 N.E.2d 674 (1989). Complainant attempts to prove discrimination by the indirect method under the **McDonnell-Douglas** three-step approach. The Complainant must first prove, by a preponderance of the evidence, a *prima facie* case of discrimination, which raises a rebuttable presumption that the employer unlawfully

discriminated against her. Once the Complainant has demonstrated a *prima facie* case, the employer then has the burden of articulating a legitimate, non-discriminatory reason for the adverse employment action. If the employer carries its burden of production, the presumption of discrimination drops and the Complainant is required to meet his continuing burden of proving by a preponderance of the evidence that the employer's articulated reason was not its true reason, but rather, merely a pretext for discrimination. **St. Mary's Honor Center v. Hicks**, 509 U.S. 502, 113 S. Ct. 2742 (1993). The burden of proving that the employer engaged in discrimination remains at all times with the Complainant. **Burdine**, *supra*.

To establish a *prima facie* case for denial of promotion based on sex discrimination, the Complainant must show that (1) she is a member of a protected class, (2) she applied for a job for which there was an opening, (3) she was qualified or able to perform the job and was rejected, and (4) that the person hired for the position had similar or lesser qualifications and did not belong to Complainant's protected class. **Kankol and The People's Gas Light and Coke Co.**, ___ Ill HRC Rep. ___, (1988CF0122, April 26, 1993); **Henson and Board Of Commissioners, Cook County, Prison Health Services**, 37 Ill HRC Rep. 56 (1988).

Complainant has established all four elements of a *prima facie* case. For the first element, it is undisputed that Complainant is female and is therefore a member of the protected class. As to the second element, Complainant testified credibly that, in late 1997, she became aware that her immediate superior officer, Captain Weyforth, was considering retiring. At the time, Captain Weyforth was the Regular Watch Commander on second watch. Complainant went to Commander Polk and informed him that she was interested in filling Captain Weyforth's position upon his retirement to become effective April 1, 1998. As District Commander, Polk had the authority to select a lieutenant to fill Captain Weyforth's position. Complainant has established the second element of her *prima facie* case.

At the time Complainant informed Polk that she was interested in filling Captain Weyforth's position, she was a lieutenant assigned to the second watch who reported to Captain

Weyforth. As lieutenant, Complainant would regularly perform the duties of the watch commander when she worked as Acting Watch Commander during Captain Weyforth's regular days off work, when Captain Weyforth was on vacation and when Captain Weyforth was otherwise away from the District. Complainant later learned on March 31, 1998 that Hartford, a male lieutenant, had received the promotion to the position to be vacated by Captain Weyforth. At the time Hartford received the position, Complainant had approximately one year more of experience as a lieutenant than Hartford. Complainant has established that she was qualified to perform the job, that she was rejected, and that the person selected for the position had similar or lesser qualifications and did not belong to Complainant's protected class. Complainant has demonstrated the third and fourth elements of her *prima facie* case. Thus, Respondent must articulate a legitimate, non-discriminatory reason for not promoting Complainant to the position of Regular Watch Commander.

Respondent's articulation

Polk testified that he selected Hartford as the Regular Watch Commander on the second watch because he also worked the second watch the majority of the time and "I needed someone I could relate to, someone that had experience in police work and someone that knew how to get along with people. That's what I looked for." Polk described Hartford as having those qualities. Polk testified that he did not select Complainant because she "didn't show me the qualities that I was looking for for an Acting Watch Commander." Polk described Johnston as "arrogant, she has no people skills, she thinks she knows everything and she is very rude." In further describing Complainant, Polk said, "She didn't have the qualities that I think that you [a regular Watch Commander] needed for that job." Respondent has put forth legitimate, nondiscriminatory reasons for failing to select Complainant for the position.

Complainant's demonstration of pretext

Complainant attempts to demonstrate that Respondent's reasons are pretextual and that Polk failed to promote her on the basis of her sex. A Complainant may establish pretext by

showing either that (1) the employer's explanations are not worthy of belief; (2) the proffered reason had no basis in fact; (3) the proffered reason did not actually motivate the decision; or (4) the proffered reason was insufficient to motivate the decision. **Grohs v. Gold Bond Prod.**, 859 F.2d 1283 (7th Cir. 1988), **Burnham City Hospital v. Illinois Human Rights Commission**, 126 Ill.App.3d 999 (4th Dist. 1984).

I find Polk's testimony on this issue unbelievable and unsupported in light of the record. Polk's demeanor during his testimony was evasive and not forthcoming and he exhibited hostility, disdain and arrogance for these legal proceedings. This attitude had been previously demonstrated by Polk's conspicuous absence from these proceedings during the first days of the public hearing. I find it necessary at this point to comment on the circumstances of Polk's appearance at the public hearing in response to a properly served subpoena. Although Polk was properly subpoenaed to appear as a witness for the public hearing on September 22, 2003, Polk failed to appear on that date, or on the consecutive subsequent hearing dates of September 23, 24 or 25, 2003, forcing a continuation of the public hearing to allow Respondent an opportunity to contemplate whether to file a petition to enforce the subpoena pursuant to the Act at 5/8-104(E) and the Commission Rules at 5300.210(e).

Subsequent to the issuance of the order continuing the matter, this tribunal was advised by Respondent's counsel that Polk had agreed to appear on October 23, 2003, negating the need for an enforcement proceeding. At the reconvened public hearing on October 23, 2003, under questioning by Complainant concerning Polk's failure to appear at the September 22, 2003 public hearing, Polk admitted that he had not been in the hospital or out of town during the time of the public hearing. Polk said that he failed to appear because he had a "conflict in scheduling." When further questioned as to whether he felt that a scheduling conflict warranted non-compliance with a subpoena, Polk answered, "Counsel, I have a business to run and I am the only one to run it and I couldn't come that day. I don't get paid to come down here. I am not

a police officer; I don't get paid; I have to pay money to come down here.”¹ Polk offered no further reason for failing to appear on the subpoenaed hearing date.²

Polk testified that he did not select Complainant because “I needed someone I could relate to, someone that had experience in police work and someone that knew how to get along with people”; that Complainant “didn't show me the qualities that I was looking for for an Acting Watch Commander”; and that Complainant was “arrogant, she has no people skills, she thinks she knows everything and she is very rude.”

Polk did not elaborate on the meaning of his articulation that he needed someone he “could relate to” and the subjective nature of that statement does not lend itself to any kind of objective analysis; however, Polk's articulation that he needed “someone that had experience in police work and someone that knew how to get along with people” can be objectively analyzed on this record, which supports that Complainant could not have been rejected based upon this articulation.

The evidence shows that Complainant had approximately one year more experience as a lieutenant than Hartford. Having the rank of lieutenant allows for the opportunity to gain experience in the duties of a Watch Commander since a lieutenant routinely works as Acting Watch Commander when the Regular Watch Commander is away from the District. Moreover, Complainant's performance reviews indicate that she exhibited no deficiencies in the area of personal relations. An examination of Complainant's performance reviews from January 1994 through December 1997 — ending with the last performance review period covering the period immediately prior to Complainant's non-selection for the position — demonstrates that Complainant's qualities essentially mirror those Polk asserts he was seeking.

¹ Complainant admitted that he did receive a check with the subpoena, but said he did not cash it.

² On October 23, 2003, when Polk appeared to present testimony at the reconvened public hearing, Complainant made a motion objecting to Polk being allowed to testify after he had failed to appear for the initial public hearing dates on the basis of inherent prejudice. That motion was denied.

Complainant's performance rating as a sergeant while in District 12 for January 1, 1994 through June 30, 1994 indicates a total rating of 92.8 out of a possible 100. The rating was given by Lt. Vaughn and approved by Captain Kraft. The rating indicates in the "Personal Relationships" section, "Excellent rapport with team members and citizens, tactful and even tempered."

Complainant's performance rating for July 1, 1994 through December 31, 1994 indicates a total rating of 92.0 out of a possible 100. Complainant was rated for her performance while in the position of sergeant in District 12. The rating was given by Lt. Vaughn and approved by Captain Kraft. The rating indicates in the "Personal Relationships" section, "Neat in appearance-respects the rights of others. Understanding and considerate."

Complainant's performance rating for January 1, 1995 through June 30, 1995 indicates a total rating of 95 out of a possible 100. Complainant was rated for her performance as a lieutenant in District 3. The rating was given by Captain Merritt and approved by Polk. The rating indicates in the "Personal Relationships" section, "Discusses problems with officers when necessary, emphasizes position of supervisor as member of the team."

Complainant's performance rating for July 1, 1995 through Dec 31, 1995 indicates a total rating of 95 out of a possible 100. Complainant was rated for her performance as a lieutenant in District 3. The rating was given by Captain Weyforth and approved by Polk. The rating indicates in the "Personal Relationships" section, "works diligently to gain and maintain respect of subordinates and peers."

Complainant's performance rating for Jan 1, 1996 through June 30, 1996 indicates a total rating of 97 out of a possible 100. Complainant was rated for her performance as a lieutenant in District 3. This rating was issued by Captain Weyforth and approved by Polk. In the "Personal Relationships" section there are comments stating "Superior rapport with all fellow workers and citizens. Is watch Sector Manager."

Complainant's performance rating for July 1, 1996 through December 31, 1996 indicates a total rating of 99 out of a possible 100. Complainant was rated for her performance as a lieutenant in District 3. This rating was issued by Captain Weyforth and approved by Polk. In the "Personal Relationships" section there are comments stating "Is well regarded by superiors, peers, and subordinates. Excellent rapport with all."

Complainant's performance rating for January 1, 1997 through June 30, 1997 indicates a total rating of 99 out of a possible 100. Complainant was rated for her performance as a lieutenant in District 3. This rating was issued by Captain Weyforth and approved by Polk. In the "Personal Relationships" section there are comments stating "A real team player. Looked up to by subordinates."

Complainant's performance rating for July 1, 1997 through December 31, 1997 indicates a total rating of 97 out of a possible 100. Complainant was rated for her performance as a lieutenant in District 3. This rating was issued by Captain Weyforth and approved by Polk. In the "Personal Relationships" section there are comments stating, "Deals fairly with Community. Involved with coordinating officers in problem solving."

Particularly noteworthy are the performance ratings approved by Polk for the periods July 1, 1996 through December 31, 1996; January 1, 1997 through June 30, 1997 and July 1, 1997 through December 31, 1997 – the periods immediately prior to Complainant's non-selection for the promotion.

Complainant's performance rating for the period July 1, 1996 through December 31, 1996 indicates that Complainant "Is well regarded by superiors, peers, and subordinates. Excellent rapport with all." This rating was issued by Captain Weyforth and approved by Polk. "Complainant's performance rating for January 1, 1997 through June 30, 1997 indicates "A real team player. Looked up to by subordinates." This rating too was issued by Captain Weyforth and approved by Polk. Complainant's performance rating for July 1, 1997 through December

31, 1997 indicates “Deals fairly with Community. Involved with coordinating officers in problem solving.” Again, this rating was issued by Captain Weyforth and approved by Polk.

What is noticeably missing from these performance ratings are comments that even hint that Complainant lacked an ability to get along with people. These performance ratings, which were approved by Polk through his signature, paint a picture of Complainant’s “people skills” that is directly contrary to Polk’s characterization of Complainant in his articulation.

In support of Polk’s characterization of Complainant as “rude” and “arrogant” Polk described an occasion where he informed Complainant that he had received a directive from his superiors to order her to spend more time in the field and that Complainant replied that she would go out in the field and read a book like the other lieutenants. Polk testified, “I got very upset that a lieutenant would tell me that they are not going to do their job.” Polk maintains that he told Complainant that he expected her to do her job and to go out and supervise sergeants and patrol the district. Although Complainant admits she made this statement, she maintains that she and Polk were mutually joking during the conversation. Polk asserts that he did not believe the response to be a joke.

However, Polk’s stated reaction is not consistent with one supporting that he believed Complainant’s statement to have been a serious one. Polk maintains that he received a directive from a superior to execute an order upon a subordinate, and once he delivered the order, Complainant openly responded that she would not perform her job duties and intended instead to go out in the field and read a book. While contending that he took this refusal as serious and that he was very upset at Complainant’s response, Polk failed to take any action whatsoever to demonstrate his indignation with Complainant’s supposed inappropriate comments. Polk took no disciplinary action and gave no verbal or written reprimand to what he supposedly perceived as Complainant’s immediate refusal to obey his order.

It is difficult for me to believe that Polk would not have taken any disciplinary action had he genuinely believed that Complainant’s statement was not made in jest. Complainant had

credibly testified that Polk regularly stopped by the office and joked with her when she was working as Acting Watch Commander; and Polk testified that lieutenants joked with him all the time. The inference is that a culture of lighthearted joking between Polk and his immediate subordinates mutually existed. Polk's lack of disciplinary response to Complainant's statement supports that Polk did not take Complainant's statement as serious and that he actually received it with the levity with which Complainant intended.

As to Polk's characterization of Complainant as rude, Polk testified that Complainant had a habit of walking in his office without stopping at the secretary's desk and that at one time Complainant interrupted him while he was standing at the front desk talking to a narcotics sergeant.

Although I find Polk's testimony credible as to the accounting of these occurrences, I again find it difficult to believe that Polk would find this conduct so egregious, but not be moved to reprimand Complainant for her alleged inappropriate action. Further, the claim that Polk genuinely construed Complainant's behavior as rude and arrogant is virtually impossible to reconcile with Complainant's six performance reviews for the periods from June 1995 through December 1997, which were all approved by Polk. These performance reviews give no indication whatsoever that Complainant had personality deficiencies that could be remotely construed as arrogant or rude. On the contrary, the reviews, which were not written in the context of pending litigation, suggest that Complainant's demeanor was exemplary.

Polk further testified that he does not consider seniority when selecting a lieutenant to become a Regular Watch Commander. However, Complainant credibly testified that Polk relayed to her a conversation he previously had with Chief Deputy Hernandez sometime after Cornish had been assigned to the Regular Watch Commander position on the first watch. Polk told Complainant that Hernandez had questioned his selection of Cornish as the Regular Watch Commander on first watch, and that Polk responded to the Deputy that Cornish was his most senior lieutenant and asked if the Deputy expected for him to have put one of his junior

lieutenants in a Regular Watch Commander position. Although Polk denies that this conversation with Complainant took place, I find Complainant's testimony about the conversation detailed and credible and give it more weight than Polk's denial. Therefore, I find Polk's testimony that a lieutenant's level of seniority plays no role in his promotional selection decisions disingenuous.

Moreover, Polk's immediate previous pattern of selection cannot be ignored. When Captain Dulay's position as Regular Watch Commander was to be vacant in March 1997, Cornish was the most senior lieutenant in the 3rd District. Cornish asked Polk for the position and Polk assigned Cornish to the position. Later that year, when Complainant became aware that Captain Weyforth would be retiring, Complainant was the most senior lieutenant behind Cornish and asked Polk for the position. Polk did not select Complainant for the position and instead, skipped over Complainant and selected Hartford — the next most senior lieutenant behind Complainant — although Hartford did not seek and had not requested the position.

I find Polk's testimony as to his articulation contrived, disingenuous and unbelievable. There is nothing in the record that supports that Polk's articulated reasons for rejecting Complainant for the promotion to Regular Watch Commander are his true reasons. Based on this record, Polk had no reason for passing over Complainant and instead awarding the position to a male lieutenant who neither sought nor applied for the position, other than the fact that Complainant is female.

DAMAGES

The purpose of the damage award is to make the Complainant whole. When the Complainant has been a victim of unlawful discrimination under the Act, she should be placed in the position she would have been but for the discrimination. **Clark v. Human Rights Commission**, 141 Ill. App. 3d178, 490 N.E.2d 29 (1st Dist. 1986).

Back pay

The salary for the position of Captain is synonymous to that of the position of Watch Commander. When working as a Regular Watch Commander, a lieutenant gets paid \$3.28 per hour more than when working solely as lieutenant. Complainant would have been paid that differential pay for 8 hours per day for 47 days from April 1998 until November 1998, when calculating the days during this period that she did not work as Watch Commander. $\$3.28 \times 8 \text{ hours per day} \times 47 \text{ days} = \$1,233.28$. On July 1, 1998 a new contract went into effect and the differential pay increased by 84 cents per hour. Under the pay increase Complainant would have worked as Watch Commander for 22 days of the April 1998 through November 1998 period. $84 \text{ cents} \times 8 \text{ hours per day} = 6.72 \times 22 = \147.84 . $\$1,233.28 + \$147.84 = \$1,381.00$. Complainant is entitled to \$1,381.00 in back wages.

Promotion

Complainant was promoted to Regular Watch Commander in November 1998, negating any need to address this issue.

Emotional Damages

Complainant requests \$10,000.00 in emotional damages. The presumption under the Act is that recovery of all pecuniary losses will fully compensate an aggrieved party for his losses. **Smith v. Cook County Sheriff's Office**, 19 Ill. Rep. 131,145 (1985). However, the Commission will award damages beyond pecuniary loss if it is absolutely clear from the record that the recovery of pecuniary loss will not adequately compensate the Complainant for his actual damages. **Kincaid v. Village of Bellwood, Bd. Of Fire and Police Commissioners**, 35 Ill. HRC Rep. 172, 182 (1987). The Commission accepts a Complainant's own testimony as a sufficient basis for awarding emotional distress damages. **Nichols and Boyd A. Jarrell & Co., Inc.** 14 Ill. HRC Rep. 149 (1984). Complainant submitted credible testimony detailing the negative effect on her emotional state and her demeanor as a result of not receiving the promotion.

Complainant described that it was extremely devastating, very depressing and demoralizing to her to have worked very hard, to have gained experience, and to have worked as Acting Watch Commander for a longer period of time than any other lieutenant and still to have been passed over for the promotion. Complainant expressed that, although she did the best she could, it was harder for her to continue to work at the same high level because she found herself feeling frustrated and angry. Complainant described that she felt shock and embarrassment to have to continue to face the patrol officers she had been working with on a daily basis with no real explanation to offer as to why she had not received the promotion. Complainant depicted herself as having the difficult feeling that, although she was the senior lieutenant and the only female lieutenant in the District, she was not good enough to perform the Regular Watch Commander position, she was merely good enough to perform the job on a temporary basis.

The record supports that Complainant will not be made whole by recovery of back pay alone. It was clear during Complainant's testimony that she was extremely proud of her performance as a lieutenant and Acting Watch Commander and believed she was doing a good job through feedback from her superiors, from her performance reviews and because she had never received any negative feedback about her supervisory skills, management style or any of her work. The Regular Watch Commander position was one that Complainant coveted and had worked hard for by regularly performing the duties as Acting Watch Commander and by volunteering to take on the additional duties of preparing an acceptable 3rd District CAPS plan following the official rejection of the previously submitted plan. Further, the Regular Watch Commander position is a springboard to being promoted to any other exempt position in the CPD.

Although Complainant was subsequently promoted to Regular Watch Commander in

November of 1998, she was forced to endure feelings of embarrassment, demoralization, frustration, anger and devastation for approximately seven months. I find the requested amount of \$10,000.00 an appropriate amount to compensate Complainant for her emotional distress.

Interest

Finally, Complainant is entitled to interest on the back pay award in order to make her whole.

RECOMMENDATION

Accordingly, it is recommended that the Complaint in this matter be sustained on the sex discrimination claim and that Complainant be awarded the following relief:

1. Respondent pay to Complainant lost back pay in the amount of \$1,381.00;
2. Respondent pay to Complainant \$10, 000.00 in emotional damages;
3. Respondent pay to Complainant prejudgment interest on the amount in number 1 to be calculated as set forth at 56 Ill.Admin.Code, Section 5300.1145;
4. Respondent clear from Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition thereof;
5. Respondent cease and desist from discriminating on the basis of sex;
6. Respondent pay to Complainant the reasonable attorney's fees and costs incurred in the prosecution of this matter, that amount to be determined after review of a motion and detailed affidavit meeting the standards set forth in **Clark and Champaign National Bank**, 4 Ill. HRC Rep. 193 (1982), said motion and affidavit to be filed within 21 days after the service of the Recommended Liability Determination; failure to submit such a motion will be seen as a waiver of attorney's fees and costs;
7. If Respondent contests the amount of requested attorney's fees, it must file a written response to Complainant's motion within 21 days of the service of said motion; failure to do so will be taken as evidence that Respondent does not contest the amount of such fees;
8. The recommended relief in paragraphs 1 through 5 is stayed pending resolution of the issue of attorney's fees and issuance of a final Commission order.

ENTERED: March 30, 2004

HUMAN RIGHTS COMMISSION

By: _____
SABRINA M. PATCH
Administrative law Judge
Administrative Law Section

Marie C. Johnston v. City of Chicago Police Dept.
Recommended Liability Determination
ALS # 10945